

REMARKS

In the present Amendment, claim 1 has been amended to recite “An isolated *Lactococcus garvieae* 20-92 deposited under FERM BP-10036.” Claim 9 has been amended to depend from claim 1. Claims 4, 9 and 14 have been amended consistent with the amendment to claim 1. Claim 15 has been cancelled without prejudice or disclaimer. No new matter has been added, and entry of the Amendment is respectfully requested.

Upon entry of the Amendment, claims 1, 4-9, 12 and 14 will be pending, of which claims 9 and 12 are withdrawn from consideration.

If claim 1 is found to be allowable, Applicants respectfully request rejoinder of withdrawn method claims 9 and 12 pursuant to MPEP §821.04(b).

Claims 4-8 and 14-15 are *provisionally* rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 and 6-14 of co-pending Application No. 12/095,828.

Claims 1, 4-8 and 14-15 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claims 1, 4-8 and 14-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Villani et al. (*J. Appl. Microbiol.* 2001, 90, 430-39, “Villani”) or Fortina et al. (*Food Microbiol.* 2003, 30, 397-404, “Fortina”) or Paludan-Muller et al. (*International J. of Food Microbiol.* 73 (2002) 61- 70, “Muller”) taken with Setchell et al. (US 7,396,855, “Setchell”) and Elliott et al. (*Journal of Clinical Microbiology*, 1991, 29(12): 2731-2734, “Elliott”).

Applicants submit that the present claims are patentable for at least the reasons set forth in the Remarks section of the Amendment under 37 C.F.R. § 1.116 filed May 24, 2011. Further,

Applicants note that the subject matter recited in claim 1 as amended was recited in previous claim 3 and previous claim 3 was indicated to be allowable.

Allowance is respectfully requested. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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